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22 NOV 1989

CEMP-RS/CERE-AP

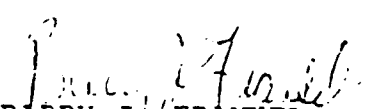
MEMORANDUM FOR SEE DISTRIBUTION

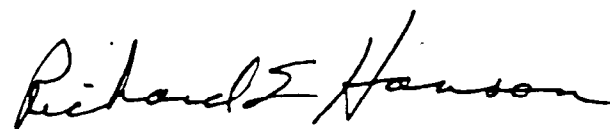
SUBJECT: USACE Real Estate Support for EPA Superfund Program

1. The purpose of this memorandum is to provide guidance and procedures for preparation of Real Estate Planning Reports (REPR) and Real Estate support for the EPA Superfund Program. The attached draft guidance is for immediate implementation. Request you provide copies to all Superfund district project managers and real estate offices for action. This guidance has been concurred in by HQEPA.

2. Points of contact at this headquarters are Jim Gibson, CEMP-RS, (202) 504-4709 and Laura Norman, CERE-AP, (202) 272-0495.

FOR THE COMMANDER:


BARRY J. FRANKEL
Director of Real Estate


for GEORGE R. ROBERTSON
Major General, USA
Assistant Commander and Director
Military Programs

Encl

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CF:
ASA(CW), ATTN: Ms. Tornblom
HQEPA, ATTN: CDR William Zobel

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REAL ESTATE SUPPORT PROCEDURES FOR EPA SUPERFUND PROJECTS

1. Purpose. Describe Real Estate procedures and provide guidance for conducting real estate planning and acquisition in support of Superfund projects.

2. Background.

a. The Corps of Engineers is supporting the Environmental Protection Agency (EPA) in its mission to clean up hazardous and toxic waste sites. This support has principally taken the form of engineering, construction, and related contract management activities. However, EPA now envisions a need for real estate support, including Real Estate Planning Reports (REPRs), acquisition activities, and other real estate support for enforcement actions.

b. To obtain the necessary real estate interests to perform remedial actions, EPA will normally either exercise its enforcement power on contaminated/threatened lands, pursuant to 42 U.S.C. Section 104(e) without just compensation to a landowner, or acquire non-contaminated/threatened lands, pursuant to 42 U.S.C. Section 104(j), with just compensation to a landowner. Enforcement activities will generally be handled by EPA and acquisition will generally be handled by USACE Real Estate for USACE assigned projects; however, there will be times when USACE will provide support activities to EPA in obtaining the necessary real estate under EPA enforcement powers. The following paragraphs describe the duties and responsibilities of relevant USACE and EPA offices in REPR, enforcement, and acquisition activities.

3. REPRs General.

a. REPRs will be required for all Corps lead projects. The need for a REPR is established between the Corps and EPA pursuant to paragraph 4a(1). Appropriate USACE and EPA elements will then follow the procedures set out below for initiating, developing, and completing REPRs.

b. Typically, REPRs will take no more than 60 days to draft depending on the complexity of the project and the type and amount of land involved. The Real Estate FOA responsible for producing a REPR shall coordinate any delays in REPR production with the USACE FOA Design Project Manager (PM) in Kansas City or Omaha and the EPA Regional Project Manager (RPM).

c. In addition to the information outlined in Figure 2-1 of ER 405-1-12, REPRs shall in all cases identify those areas of contaminated, threatened, and clean lands and should include such other information as is necessary and desirable for project purposes. (See Appendix A for more guidance on REPR contents.)

4. REPR Procedures. The following paragraphs describe the process for initiating, developing, and completing REPRs in support of EPA Superfund projects.

a. Requests for REPRs.

(1) As soon as feasible during the design phase of all Corps projects, the FOA Design PM and the EPA RPM will establish real estate requirements to be incorporated in the project budget for remediation of the Superfund site. The point for determining real estate requirements may vary by project. For example, the need for off-site real estate may be adequately identified in the Remedial Investigation/Feasibility Study (RI/FS). Other projects may undergo design changes affecting the location and amount of real estate needed for the project. Normally, a REPR should be initiated by 0% design (i.e. when the design commences). Once real estate needs have been reasonably identified, the FOA Design PM will record these requirements on a map or maps and forward this information to CEMRD-ED-E to determine the adequacy of the project's scope in relation to real estate needs.

(2) CEMRD-ED-E will review and concur on project documentation to support the limits of work. CEMRD-ED-E will then coordinate real estate needs with CEMRD-RE. After these real estate needs have been coordinated, CEMRD-RE will formally notify the Chief of Real Estate for the relevant geographical divisions that a REPR must be initiated. Additionally, CEMRD-RE will forward a copy of the REPR tasking to HQUSACE CER-AP, the FOA Design PM, and the USACE Superfund Division Coordinator in the appropriate geographical division.

(3) The Chief of Real Estate for the appropriate geographical division will task appropriate Real Estate FOA to produce REPRs. The division will forward a copy of this tasking to CEMRD-RE.

b. REPR Processing.

(1) The relevant Real Estate FOA will produce REPRs according to division tasking instructions. REPRs should be completed no later than 60 days from receipt of tasking unless there is sufficient justification for extending the REPR completion deadline. Extensions will be granted by CEMRD-RE.

(a) EPA Regions will provide the necessary funding for preparation of REPRs by maintaining and ensuring funding is available through USACE/EPA Inter Agency Agreements (IAGs).

(b) Real Estate FOA will maintain documentation of REPR production costs for later cost recovery actions by the Department of Justice (DOJ) on behalf of EPA.

(c) Real Estate FOA will coordinate with the FOA Design PM and the appropriate EPA RPM as necessary during production of the REPR.

(2) Real Estate FOA will submit final draft REPRs to their respective command division for review.

(3) Divisions will timely review and forward final draft REPRs to CEMRD-RE for approval. An information copy of the REPR will be furnished from the division to HQUSACE CERE-AP. In no case will REPRs be forwarded to EPA until they are commented upon by HQUSACE and reviewed and approved by CEMRD-RE. CEMRD-RE will approve REPRs within 15 days of receipt.

(4) CEMRD-RE will review and approve final draft REPRs before they are distributed outside USACE channels. If CEMRD-RE approves the REPR, CEMRD-RE will forward a copy of the approved final draft REPR to the FOA Design PM, the USACE Superfund Division Coordinator, HQUSACE CERE-AP, and two copies to the appropriate EPA RPM. If any changes are required before distributing the REPR beyond CEMRD-RE, CEMRD-RE will request such changes through appropriate geographical divisions to the responsible Real Estate FOA.

(5) REPRs may also be refined and enhanced after EPA review. In such cases, EPA will coordinate any changes or refinements through the FOA Design PM to the appropriate Real Estate FOA. Upon completion, the Real Estate FOA will distribute the refined or enhanced REPRs to the following activities: division, CEMRD-RE, HQUSACE CERE-AP, the FOA Design PM, the USACE Superfund Division Coordinator, the EPA RPM, and Headquarters EPA as necessary.

5. Real Estate Support. EPA Regions will determine whether land required for projects will be obtained through EPA's enforcement power, or by the acquisition of an interest in real property. After receiving the approved final draft REPR, EPA will determine how it will obtain real estate for the project as well as the need for subsequent Corps real estate support. If EPA determines to use its enforcement powers to obtain necessary real property interests, Real Estate FOA may assist EPA as outlined in paragraph 6 below. On the other hand, if EPA determines real property acquisition is necessary, and wishes USACE assistance in performing such acquisitions, the procedures set out below in paragraph 7 shall be followed. In some cases EPA may request real estate support where no REPR has been prepared. In such cases, the following procedures will also apply.

6. Enforcement. EPA Regions may request USACE to provide support on EPA enforcement actions as outlined below.

a. The EPA RPM will request assistance from the FOA Design PM for real estate support for enforcement activities. Such support may include surveying, mapping, title evidence, legal descriptions, rights-of-entry etc., but shall not include discussions or negotiations leading to the implementation of enforcement actions (i.e., landowner access agreements) without approval from HQUSACE CERE-AP.

b. The FOA Design PM will refine and coordinate requests for real estate support from EPA Regions and then forward these requests for real estate support to CEMRD-RE for action and implementation.

c. CEMRD-RE will coordinate all requests for real estate support from the FOA Design PM and task appropriate divisions to provide real estate support.

d. Divisions will receive real estate tasking from CEMRD-RE and will task appropriate Real Estate FOA to perform real estate support activities.

e. Real Estate FOA will perform real estate support in response to EPA Region tasking received through CEMRD-RE and division. Such support shall include surveying, mapping, title evidence, rights-of-entry, etc.; however, Real Estate FOA will not participate in negotiations leading to the implementation of enforcement actions (i.e., landowner access agreements) without HQUSACE CERE-AP approval.

(1) Real Estate FOA will maintain documentation of real estate support activities for later cost recovery actions by DOJ on behalf of EPA.

f. In the event the EPA Region requests expanded USACE real estate support in an enforcement action, (such as negotiations, for landowner access agreements), this expansion must first be approved by HQUSACE CERE-AP. All requests for expansion of USACE activities shall be forwarded from the EPA Region to CEMRD-RE who will then forward the request to HQUSACE CERE-AP for approval.

7. Acquisition. Pursuant to a directive from HQUSACE CERE-AP, Real Estate FOA shall perform real estate acquisition in accordance with established laws and regulations applying to USACE Real Estate acquisitions.

a. If land shall be acquired by acquisition pursuant to PL 91-646, EPA Regional Offices must obtain EPA Headquarters approval prior to acquiring real property at the project. Where a REPR has been prepared, the REPR will accompany any request to acquire real property, and will become part of the acquisition strategy plan for the project which must be approved by EPA Headquarters.

b. EPA Headquarters will approve the EPA Region's request for acquisition of real property and will then issue a real estate directive to HQUSACE CERE-AP authorizing the Corps to acquire real estate. However, EPA Headquarters will not issue a directive to acquire real estate until the State Superfund Contract (SSC) with the relevant real estate provisions is in place. Without a SSC containing language indicating the State will take title to the land once the remedial action is completed, EPA has no authority to acquire any interest in real property.

c. HQUSACE CERE-AP will issue real estate directives to relevant divisions to perform real estate acquisition at Superfund sites.

d. Divisions will receive tasking from HQUSACE CERE-AP to acquire real estate at Superfund projects and will then task appropriate Real Estate FOA to acquire real estate based on the directive from HQUSACE CERE-AP.

e. Real Estate FOA will perform real estate acquisition only pursuant to a directive from HQUSACE CERE-AP.

(1) Real Estate FOA will coordinate acquisition of real property with the FOA Design PM.

(2) Real Estate FOA will maintain documentation of real estate acquisition costs for later cost recovery actions by DOJ on behalf of EPA.

f. In the event condemnation proceedings are instituted to acquire the real estate specified in the directive to the Real Estate FOA, the Real Estate FOA will prepare the necessary documents for assembly of the Declaration of Taking (DT) to implement condemnation proceedings. The Real Estate FOA, through the appropriate geographical division, will then forward the DT "package" to HQUSACE CERE-AP. HQUSACE CERE-AC will review and transmit the DT "package" to Headquarters EPA, who will approve, sign and return the DT "package" to HQUSACE CERE-AC for forwarding to DOJ.

REAL ESTATE PLANNING REPORT

1. Purpose: Brief description of the project and reason for real estate access at the project.
2. Scope: Estimated acreage requirements.
3. Contaminated/Noncontaminated Lands: Identify whether necessary real estate is contaminated/noncontaminated/threatened.
4. Estate: Recommended estate to be acquired (e.g. Fee Title, Easement, License, etc.)
5. Ownership: Brief discussion of number and names of owners, and, if known, their attitudes concerning the proposed acquisition.
6. Value: Estimated value of real estate interests to be involved.
7. Problems: Discuss any known or potential problem areas.

Exhibits:

- A. REPR authorizing letter
- B. Map of area to be acquired
- C. Summation of how real estate values were derived